LLOYD L. JONES

IBLA 90-476 Decided October 1, 1993

Appeals from a decision of the Director, California State Office, Bureau of Land Management, affirming action taken by the Folsom Resource Area Manager to limit access to conform to an approved plan of operations for mining claim CAMC 151174.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Surface Management: Federal Land Policy and Management Act of 1976: Wilderness--Mining Claims: Plan of Operations: Mining Claims: Surface Uses

A road constructed to provide motor vehicle access to a mining claim located in a wilderness study area without first obtaining an approved plan of operations permitting such activity pursuant to provision of 43 CFR 3802.1-1(a) was properly required to be reclaimed.

APPEARANCES: Robert A. Berg and Lloyd L. Jones, Midpines, California, pro sese; Hildegarde Heidt and William Imhoff, Midpines, California, intervenors.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Lloyd L. Jones and Robert A. Berg have appealed from a June 18, 1990, decision of the California State Director, Bureau of Land Management (BLM), that affirmed actions taken by the Folsom Resource Area Manager to limit access to the J & B # 2 placer mining claim, CAMC 151174, to access provided by a plan of mining operations approved by BLM on May 11, 1988.

The J & B # 2 was located on May 29, 1984, in the S½ NW¼ SW¼ sec. 6, T. 4 S., R. 18 E., Mount Diablo Meridian, Mariposa County, California.
The claim lies on the Merced River in a wilderness study area (WSA), where appellants have conducted seasonal dredging operations in the river. On May 11, 1988, a mining plan of operations proposed by appellants for their claim was approved by BLM to provide that "[t]he Merced/Yosemite Railroad grade will be used for access to the claim." The approach to the J & B # 2 claim by the railroad grade runs partially across a 40-foot wide strip of private land containing 0.92 acres of land for which an access trail easement was granted to the United States on March 11, 1970. See Access Trail Easement from J.W. Radil, dated March 11, 1970. Access to the trail easement is provided by a private bridge that crosses a steep ravine called

"Hall's Gulch." The bridge is the subject of a right-of-way agreement dated November 30, 1984, between BLM and intervenors Hildegarde Heidt and William Imhoff, providing for construction and maintenance of a bridge and a road 2,246 feet long to provide access to lands owned by Heidt and Imhoff. The right-of-way grant provides that the bridge (also located in sec. 6, T. 4. S., R. 18 E.) is to be closed by a locked gate to exclude motor vehicles. An amendment to the right-of-way dated August 27, 1985, provides that BLM "retains the right of access to the [bridge] for management and administrative use only." Appellants claim that when BLM changed the lock combinations on the gate to the bridge and reclaimed a road they had constructed on the trail easement to restore it to foot traffic only that they were deprived of an approved access road to their claim. They argue that their operations on the river have increased to the point where their dredging equipment now requires movement by motor vehicle, and that such access must be provided of necessity.

In their statement of reasons (SOR), appellants state that they use the 40-foot trail easement and that they have used the Heidt-Imhoff bridge to move motor vehicles onto the trail easement. Citing Alfred E. Koenig, 4 IBLA 18, 78 I.D. 305 (1971) and Mosch Mining Co., 75 IBLA 153, 90 I.D. 382 (1983), they contend that they have a "valid existing right of nonexclusive access to our mining claim" that includes a right to use motor vehicles on the railroad grade, trail, and privately owned bridge (SOR at 6). They argue that they are entitled to cross the private bridge because of the reservation by BLM of the right to use the bridge for management and administrative purposes (SOR at 2). Similarly, they claim the right to use the trail in the fashion they have done because the trail easement is to be used "for the benefit of the people of the United States." Id. Appellants also contend, citing United States v. Doremus, 658 F. Supp. 752 (D. Idaho 1987) and United States v. Richardson, 599 F.2d 290 (9th Cir. 1979), that the grant of access by way of the railroad grade given in their approved operating plan permits the use of motor vehicles on the old railroad grade because their actual use of motor vehicles on the grade, bridge, and trail was known to BLM employees when the operating plan was approved in 1988 (SOR at 2, 6).

BLM takes the position that access to the J & B # 2 by way of the railroad grade has never included motor vehicle access. According to BLM, because the approach to the grade is cut by a ravine that will not permit passage of such traffic, and neither the trail easement nor the private bridge that connect the publicly owned grade to the J & B # 2 claim have ever provided or can provide such access, there has never been motor vehicle access to the claim since it was located in 1984. BLM concludes that construction of an access road suitable for motorized traffic has not been approved and that appellants cannot be allowed to drive a motor vehicle route into the WSA because to do so would be contrary to the interim management plan for the WSA and would violate "our responsibilities for non-impairment of wilderness study areas" (BLM Response to SOR at 4).

Intervenors have also filed a response to the SOR in which they explain their position concerning use of their bridge (which is located on public

land) and the connecting trail right-of-way that crosses their land to give access to the Federal lands where the claim at issue in this appeal is situated:

> Prior to our construction of the bridge, there was no access or roadway west of Hall's Gulch (the bridge crossing), nor had any party applied for such a right-of-way use. Since the railroad right-of-way was abandoned in 1944, the trestle's deterioration required that it be partially dismantled by the BLM in 1978 to remove an attractive nuisance.
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> The right-of-way agreement clearly states that the bridge is our private property, which we must maintain and from which we must indemnify the United States against losses arising from its use. In view of these obligations and the rights expressly granted in the right-of-way agreement, we intend to restrict the vehicular use of the bridge by individuals other than the BLM.
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> It was our intention that the construction of the bridge should improve the pedestrian access for everyone who uses the access trail easement along the river and our property. This brings us to the issue regarding the BLM's "Access Trail Easement" No. 1361 RE-FOL-60. Berg and Jones contend that the dimensions of the easement provide them with adequate room to use the easement for a roadway. It is an obvious delusion on their part to assume that dimensions prescribe an easement's use. In fact, the 40 foot width for either road easement or trail easement is required to provide adequate latitude to locate and develop the most economical access. It does not convey any other use than that expressly defined in the agreement.

(Intervenor Response to SOR at 2, 3).

Intervenors also explain the circumstances under which appellants gained access by motor vehicle to the bridge (and thereby to the trail easement) in order to perform their construction work on the trail:

> We have known [appellants] for approximately 15 years and during that period of time in the spirit of neighborliness we have on occasion allowed Berg and Jones and other claim holders to transport their dredging equipment across our property with their vehicles. Also in recent times, we gave the bridge combination to Pierre Ott for the purpose of caretaking our property. During those periods of our absence, Ott, Jones and others undertook to pioneer a road into the W.S.A. and Wild and Scenic River Study Area despite repeated cautioning by us that their actions were a violation of our right-of-way agreement. Our absence from the property and their assurance that they would not continue this road work led us to believe the abuse would stop. Unfortunately, it did not stop until the Area Manager took action to reclaim the

area and we subsequently changed the gate lock combination. This episode has clearly demonstrated to us the necessity to secure

> the bridge gate.

(Intervenors Response at 5).

[1] In Alfred E. Koenig, supra, relied upon by appellants, this Board found that it was unnecessary for a mining claimant to apply for "a special land use permit to accommodate an access road right-of-way across public domain lands" in order to obtain access to his mining claim. Id. at 4 IBLA 19, 21, 78 I.D. 305, 307. In Mosch Mining Co., supra, also cited by appellants, we determined that access to mining claims was instead sanctioned by Departmental surface management regulations implementing section 302 of the Federal Land Policy and Management Act of 1976 (FLPMA). See id. at 75 IBLA 159, 90 I.D. 386. In cases involving operations in a WSA, even where only part of the mining operation is maintained within the WSA, the surface management regulations at 43 CFR Subpart 3802 apply. Paul M. Shock, 126 IBLA 232, 235-36 (1993), and cases cited therein. In the instant case, therefore, the relevant regulation provides that

> [a]n approved plan of operations is required for operations within lands under wilderness review prior to commencing * * * [a]ny mining operations which involve construction of means of access including bridges * * * or improving or maintaining such access facilities in a way that alters the alignment, width, gradient size, or character of such facilities.

43 CFR 3802.1-1(a). Failure to obtain prior approval of a plan of operations for any such activity subjects unauthorized improvements to reclamation or removal. See Paul M. Shock, supra at 236.

Appellants argue that their approved plan of operations authorized motor vehicle use although no reference to such use appears in the plan. They contend, citing the Doremus and Richardson cases, that motor vehicle access is implied in their approved plan if the document is given a reasonable reading in the light of the facts of this case. They reach this conclusion by assuming that the railroad right-of-way "is an existing road" (emphasis in original), and that the Area Manager knew that they were using their motor vehicles to cross the private bridge across Halls Gulch and his failure to object when he approved their plan amounted to an endorsement of their road-building project (SOR at 2, 5). While the bridge was closed by a gate with a sign notifying the public that motor vehicle traffic was not allowed, appellants argue that this notice did not apply to them because of their approved plan of operations (SOR at 2). This conclusion is premised on a reading of the trail easement grant to the United States that assumes that, because the granted right-of-way is 40 feet wide, it may be used for
a road of that width. They also reason that the reservation by BLM of a right to use the private bridge constructed by intervenors is directly transferable to appellants to provide them motor vehicle access to their claim because of their right to work their claim.

The Doremus opinion observed, concerning the purpose of operating plans required of miners by Federal regulation, that when a miner agrees to such a plan "the operating plan itself becomes the definition of what is reasonable and significant conduct under the circumstances [and] operating outside the terms of the operating plan vehicle violates the plan and is unreasonable." Id. at 655 F. Supp. 755. In cases where the plan is unclear or ambiguous, it rests with the miner, who best knows his own operation, to propose amendments as needed to make the plan conform to the requirements of his actual operation. Id. Applying to this case the rule of reason adopted by the Doremus and Richardson opinions, the facts here shown do not support the arguments advanced by appellants. The approach to the railroad grade lay across a private bridge that was closed to motor vehicles. The claim held by appellants was located within a WSA, a circumstance that required the filing of a proposed plan of operations before construction or enlargement of an access road could begin. The plan approved by BLM in 1988 did not authorize motor vehicle access, but limited access to use of the railroad grade, which became a footpath after the private bridge was crossed. Under these circumstances, it was not reasonable to infer a right to build a road for motor vehicles on the trail easement without prior application to BLM for an amendment to the existing plan of operations that would allow such activity, because such construction would have been an enlargement of the existing access to the claim and also went beyond the limits of the easement grant across which the trail into the WSA ran. Under these circumstances, if appellants needed further access across public land, they needed to apply to BLM for a modification of their existing plan to determine whether such access was available. See United States v. Doremus, supra at 754-55.

Arguments by appellants that they relied on a right of access that came into existence before they located their claim in 1984 must be rejected as without foundation in law. Any prior claim that was not properly recorded pursuant to section 314 of FLPMA was abandoned; consequently, appellants cannot claim to hold any residual rights to such claim or to be able to "tack" their 1984 claim to the abandoned claim for any purpose. See 43 U.S.C. § 1744(2)(c) (1988); United States v. Locke, 471 U.S. 84, 100 (1985). In making these arguments they simply ignore the effect that the WSA designation had on their claim, while assuming that their right to use motor vehicles was established by prior activity unrelated either to the present claim or to the WSA designation. This unrealistic approach to their rights as claimants seeking increased access to a claim in a WSA must be rejected. See Paul M. Shock, supra at 235. Under the circumstances of this case, appellants were required to apply to amend their operating plan if they wished to obtain motor vehicle access to their dredging operations. See 43 CFR 3802.1-1(a).

We therefore conclude that the provisions of 43 CFR 3802.1-1 required appellants, prior to constructing a motor vehicle route for access to their claim in the WSA, to apply to BLM for approval of a plan of operations that would include such access. Their failure to make such an application before beginning construction of a motor vehicle road within a 40-foot trail easement held by BLM over privately-owned land resulted in a situation that

required reclamation of the right-of-way to its prior condition to conform actual usage to the terms of the trail easement under which maintenance of the trail by BLM on private property was allowed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

James L. Byrnes
Chief Administrative Judge